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OFFICE OF PETITIONS

In re Application of	:
Bolduc et al.	: DECISION ON PETITION
Application No. 10/786,465	: UNDER 37 CFR 1.78(a)(3) AND
Filed: 25 February, 2004	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 9494.18514	:

This is a decision on the petition styled under 37 CFR § 1.78(a)(3) which is treated as a petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed on 15 November, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The reference to the above-noted, prior-filed applications was not included in the manner specified in 37 CFR 1.78(a)(2) and (a)(5)(*i.e.*, in an ADS or in an amendment to the first sentence following the title of the specification). Specifically, the present petition does not include an amendment to the specification contained on a separate paper (*See* 37 CFR 1.121(h), nor is the amendment in compliance with 37 CFR 1.121(b).

Accordingly, before the petitions under 37 CFR §§ 1.78(a)(3) and (a)(6) can be granted, a renewed petition under 37 CFR §§ 1.78(a)(3) and (a)(6) and an ADS or an amendment to the first sentence of the specification complying with 37 CFR 1.121 and stating the relationship of the prior-filed applications to the instant application is required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.



Charles A. Pearson
Director
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for Patent Examination Policy